

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jonathan Phillips	Team: APU	CCRB Case #: 201110498	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/12/2011 3:55 PM	Location of Incident: Livonia Avenue and Amboy Street	Precinct: 73	18 Mo. SOL 2/12/2013	EO SOL 2/12/2013	
Date/Time CV Reported Fri, 08/12/2011 4:50 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 08/12/2011 4:50 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Rafael Figueroa	25243	948336	PBBN
2. POM Mark Brinadze	26105	948309	PBBN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Cathryn Davila	05070	948853	PBBN

Officer(s)	Allegation	Investigator Recommendation
A.POM Rafael Figueroa	Abuse: PO Rafael Figueroa questioned § 87(2)(b)	
B.POM Rafael Figueroa	Abuse: PO Rafael Figueroa stopped § 87(2)(b)	
C.POM Rafael Figueroa	Abuse: PO Rafael Figueroa refused to provide his name and shield number to § 87(2)(b)	
D.POM Mark Brinadze	Abuse: PO Mark Brinadze refused to provide his name and shield number to § 87(2)(b)	

## Case Summary

§ 87(2)(b) called the Civilian Complaint Review Board (CCRB) on August 12, 2011, and filed the following complaint over the telephone (*encl. 9A-B*). At approximately 3:55 p.m. on August 12, 2011, § 87(2)(b) was stopped by PO Rafael Figueroa of Patrol Borough Brooklyn North at the corner of Livonia Avenue and Amboy Street in Brooklyn. No summons or arrest resulted from this stop. The following allegations were reported:

- **Allegation A: Abuse of Authority: PO Rafael Figueroa questioned** § 87(2)(b)
- **Allegation B: Abuse of Authority: PO Rafael Figueroa stopped** § 87(2)(b)

§ 87(2)(g)

- **Allegation C: Abuse of Authority: PO Rafael Figueroa refused to provide his name and shield number to** § 87(2)(b)
- **Allegation D: Abuse of Authority: PO Mark Brinadze refused to provide his name and shield number to** § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) was explained mediation at the conclusion of his interview at the CCRB, but he opted for investigation.

## Results of Investigation

### Civilian Statements

#### **Complainant/Victim:** § 87(2)(b)

- *At the time of the incident, § 87(2)(b) was a § 87(2)(b)-old African-American male with black hair and brown eyes who stood 6'2", 200 lbs.*

### CCRB Testimony

§ 87(2)(b) reported this incident over the telephone at the CCRB on August 12, 2011 (*encl. 9B*). He provided a telephone statement on August 17, 2011 (*encl. 10A*). He was interviewed at the CCRB on August 19, 2011 (*encl. 11B*), and participated in a photo array on July 16, 2012 (*encl. 13B and J*). § 87(2)(g)

At approximately 3:55 p.m. on August 12, 2011, § 87(2)(b) exited § 87(2)(b) in Brooklyn, the home of a friend whom he was visiting, and walked north towards Livonia Avenue. He walked alone and was wearing blue denim jeans and a white t-shirt. After walking past five buildings on Thomas Boyland Street, § 87(2)(b) stopped to speak to an elderly African-American male, whom § 87(2)(b) knows from the neighborhood but whom he denied knowing by name, in front of an outdoor public garden. The two men spoke for about five minutes about their lives and sports news. § 87(2)(b) told the gentleman that he was walking to Saratoga Deli in order to purchase a drink and the gentleman handed him a one-dollar bill and asked that § 87(2)(b) purchase him a cup of coffee. § 87(2)(b) agreed to do so, received the

one-dollar bill, and walked towards Livonia Avenue; he exchanged no other objects with the gentleman.

Stopped at a red light in the eastbound lane of traffic at the intersection of Livonia Avenue and Thomas Boyland Street was a marked NYPD van, #8537, that contained PO Rafael Figueroa, PO Mark Brinadze, and PO Cathryn Davila of Patrol Borough Brooklyn North. Upon reaching the intersection, § 87(2)(b) turned left so that he was walking west on Livonia Avenue on the sidewalk opposite Betsy Head Park. As he walked, § 87(2)(b) made eye contact for about five seconds with PO Figueroa (identified by § 87(2)(b) in a photo array and described by him as a 32-year-old bald-headed uniformed Caucasian male who stood 5'9", 180 lbs.), who was seated in the front passenger's seat of the van. As the two men made eye contact, § 87(2)(b) held no objects in his hands and he made no movements with his hands. § 87(2)(b)'s hands remained by his side and he never reached nor tugged on his waistband. § 87(2)(b) had no objects stored in his waistband and he was wearing a belt, as he always does, and his pants were not sagging.

§ 87(2)(b) continued walking west on Livonia Avenue, and as he walked between Amboy Street and Herzl Street, he turned around and noticed that the NYPD van had made a U-turn so that it was travelling in the same direction that he was walking. The van pulled up alongside § 87(2)(b) and the driver, PO Brinadze (identified by § 87(2)(b) in a photo array and described as a 35-year-old uniformed Hispanic male with black hair who stood 5'9", 195 lbs.) yelled out the window towards § 87(2)(b) "Hey you! Come here!" § 87(2)(b) ignored the command and continued walking west on Livonia Avenue.

The van stopped and both PO Figueroa and PO Brinadze exited it and ran towards § 87(2)(b) on the sidewalk. PO Figueroa extended his arm upon catching up to § 87(2)(b) and ordered him to stop walking. § 87(2)(b) stopped walking and PO Brinadze asked for his identification. § 87(2)(b) replied, "ID? For what? What do you need my ID for? What am I doing wrong? I'm just walking to the store." PO Brinadze told § 87(2)(b) "If you don't give me your ID, you're giving me a suspicious reason to just go into your pockets and search you." § 87(2)(b) replied that he had his identification and he reached towards his right rear pants pocket, removed his wallet, and handed his identification to PO Brinadze. In his initial complaint, § 87(2)(b) stated that PO Brinadze entered and removed his wallet from his rear pants pocket, and that the officers never asked to see his identification.

PO Brinadze asked § 87(2)(b) about his destination, and in a calm voice § 87(2)(b) told PO Brinadze that he was going to the store and was not causing any trouble. PO Brinadze insisted that he knew § 87(2)(b) from Chester Street and accused him of having a gun. § 87(2)(b) told PO Brinadze that he had never seen him before.

At that point, PO Figueroa asked § 87(2)(b) "You have anything you're not supposed to have on you?" § 87(2)(b) told PO Figueroa that he had nothing on his person and told PO Figueroa that he could search him. PO Figueroa entered § 87(2)(b)'s left front pants pocket with one hand, removed his cell phone charger, and handed it to § 87(2)(b). PO Figueroa then placed his hand into § 87(2)(b)'s left rear pants pocket, removed a small green Bible, and placed it back into the pocket. PO Figueroa placed his hand into § 87(2)(b)'s right front pants pocket and removed § 87(2)(b)'s cell phone, keys, and lighter; he then handed all three items back to § 87(2)(b) (*encl. 11F*). The search lasted about five minutes. PO Figueroa did not perform a pat-down of § 87(2)(b) before initiating the search of him. In his initial complaint, § 87(2)(b) described the officer who searched him as PO Brinadze.

During the time that PO Figueroa searched § 87(2)(b) two of § 87(2)(b)'s friends, § 87(2)(b) and § 87(2)(b) saw that the police had stopped § 87(2)(b). When PO Brinadze saw § 87(2)(b) and § 87(2)(b) approaching, he handed § 87(2)(b)'s identification back to him and both he and PO Figueroa walked back towards the police van. As PO Brinadze and PO Figueroa walked away, § 87(2)(b) asked PO Figueroa and PO Brinadze, "Can I have your badge numbers? Your shields? Your names?" In his testimony provided on August 19, 2011, § 87(2)(b) stated that he directed his request only towards PO Figueroa; only when interviewed again on July 17, 2012, did § 87(2)(b) state that PO Brinadze was also the target of his request for information. § 87(2)(b) stood about five feet away from the officers when he requested their information. PO Brinadze told § 87(2)(b) that he should have obtained the information when he was first stopped; PO Figueroa did not respond to the request. In his initial complaint, § 87(2)(b) alleged that it was PO Figueroa who told him that he should have obtained the information he sought at the beginning of the stop. Neither officer supplied § 87(2)(b) with his name or shield number. PO Brinadze, PO Figueroa, and PO Davila (who had no verbal or physical interaction with § 87(2)(b)) entered the police van and drove off. No summons resulted from this incident and § 87(2)(b) did not receive a "What is a Stop, Question and Frisk?" card.

**Witness:** § 87(2)(b)

#### **Telephone Statement**

§ 87(2)(b) provided a telephone statement on September 7, 2011 (*encl. 14A*). At the time of the incident, § 87(2)(b) was standing outside of M&J Deli located on Livonia Avenue when he saw three police officers following his friend, § 87(2)(b) on foot. § 87(2)(b) grew concerned and he walked down the sidewalk on Livonia Avenue and approached § 87(2)(b) coming within eight feet to where PO Figueroa (described as a short uniformed Hispanic male) stopped § 87(2)(b).

PO Figueroa ran up to § 87(2)(b) grabbed him, and asked him whether he possessed any weapons. PO Figueroa removed § 87(2)(b)'s hat and wallet from his rear pants pocket. § 87(2)(b) remained calm and asked PO Figueroa, "Why am I being stopped?" PO Figueroa returned § 87(2)(b)'s wallet to him after entering the rest of § 87(2)(b)'s pants pockets. § 87(2)(b) did not recall whether PO Figueroa performed a pat-down of § 87(2)(b)'s clothing. During this time, PO Brinadze (described as a uniformed African-American male) and PO Davila (described as a uniformed Caucasian female) stood to the side.

As PO Figueroa walked away from § 87(2)(b) § 87(2)(b) asked, "Does anyone have a pen? I want to get your names and badge numbers." § 87(2)(b) was uncertain whether § 87(2)(b) directed this request towards the group of officers or just PO Figueroa. None of the officers acknowledged § 87(2)(b)'s request for information or verbally responded to it. The group of officers walked away, entered the van, and drove off.

**Witness:** § 87(2)(b)

#### **Telephone Statement**

§ 87(2)(b) provided a telephone statement on September 20, 2011 (*encl. 15A*). She has known § 87(2)(b) for about four years.

At the time of the incident, § 87(2)(b) was walking on Livonia Avenue en route to Betsy Head Park with her children. § 87(2)(b) saw § 87(2)(b) walking alone in front of the park on Livonia Avenue between Strauss Street and Herzl Street. A police van pulled up near § 87(2)(b) and the officers inside the van ordered him to stop. § 87(2)(b) continued walking and three uniformed police officers exited the van and pursued him on foot. PO Figueroa (described as a uniformed Caucasian male with dark hair who stood 5', 140 lbs. and who appeared to be between 30-35 years of age) caught up to § 87(2)(b) and ordered him to stop walking. PO Figueroa searched § 87(2)(b) and entered all of his pants pockets, including his front and rear pants pockets. PO Figueroa removed a small Bible from § 87(2)(b)'s rear pants pocket and he and PO Brinadze (described as a uniformed Caucasian male with dark hair who stood 5'7", 145 lbs. and who appeared to be between 28-30 years of age) and PO Davila (described as a uniformed Caucasian or Hispanic female) began laughing and making jokes about the Bible. PO Figueroa asked § 87(2)(b) "What is this? Is this supposed to keep you safe?" PO Figueroa then entered one of § 87(2)(b)'s front pants pockets and removed his keys. § 87(2)(b) stated, "I don't have anything! What are you looking for? Leave me alone!"

During the time that PO Figueroa searched § 87(2)(b), § 87(2)(b) crossed the street and stood less than ten feet from where the police were dealing with § 87(2)(b). She denied hearing PO Figueroa ask § 87(2)(b) any questions. As § 87(2)(b) was searched his hands remained in the air near his shoulders and § 87(2)(b) never saw him clench his fists or attempt to initiate physical contact with PO Figueroa, PO Brinadze, or PO Davila.

The search lasted about seven minutes and PO Figueroa found nothing apart from the Bible and the set of keys on § 87(2)(b). While the officers were walking away towards their van, § 87(2)(b) asked all three for their badge numbers by saying, "I need your badge numbers because you were harassing me." § 87(2)(b) stood less than five feet away but she was uncertain whether § 87(2)(b) requested their names. None of the officers responded to § 87(2)(b)'s request. § 87(2)(b) encouraged § 87(2)(b) to follow the officers and get the information he sought. Eventually, one of the officers turned around and handed § 87(2)(b) a card and told him that he could file a complaint at the stationhouse.

### **Attempts to Contact Civilians**

Numerous attempts at obtaining verified statements from § 87(2)(b) and § 87(2)(b) were made throughout the investigation. When reached over the telephone on September 20, 2011, § 87(2)(b) declined to schedule an in-person interview at the CCRB because she had recently given birth. Follow-up telephone calls to discuss the prospect of interviewing § 87(2)(b) at her home in Brooklyn were placed on October 26 and 28, 2011, and voicemail messages were left for her. Additionally, follow-up telephone calls were placed to § 87(2)(b) on October 12 and 31, 2011, and voicemail messages were left for him to discuss scheduling an interview at the CCRB. Two contact letters – which have not been returned to the CCRB via the United States Postal Service – were mailed to § 87(2)(b) on August 31 and October 12, 2011, and one contact letter was mailed to § 87(2)(b) on August 31, 2011. As of the date of this report, neither § 87(2)(b) nor § 87(2)(b) has contacted the CCRB. A search of the New York City Department of Corrections showed that neither individual was incarcerated.

## **NYPD Statements:**

### **Subject Officer: PO RAFAEL FIGUEROA**

- *At the time of the incident, PO Figueroa was a § 87(2)(b)-old Hispanic male with black hair and brown eyes who stood 5'6", 200 lbs.*
- *On August 12, 2011, PO Figueroa was assigned to post #49 with PO Mark Brinadze and PO Cathryn Davila and he worked from 1:00 p.m. until 9:35 p.m. He was dressed in uniform and was assigned to RMP #5837, a marked van.*

### **Memo Book**

PO Figueroa recorded in his memo book (*encl. 16A*) that he stopped § 87(2)(b) at 3:55 p.m. at the corner of Amboy Avenue and Livonia Avenue for suspected criminal possession of a weapon. Only § 87(2)(b)'s name and estimated pedigree information (6'1", 200 lbs.) are included in the entry. PO Figueroa noted that § 87(2)(b) refused to provide additional information. A UF-250 was prepared.

### **Stop, Question & Frisk Report**

The Stop, Question & Frisk Report completed by PO Figueroa (*encl. 17A*) shows that he observed § 87(2)(b) for a period of two minutes before he initiated the stop of him at 3:55 p.m. The stop lasted for five minutes and the crime suspected was criminal possession of a weapon. PO Figueroa checked boxes on the report showing that he stopped § 87(2)(b) because he made furtive movements, appeared to be acting as a look-out, appeared to be casing a victim or a location, was wearing clothing commonly used in crime, and had a suspicious bulge which PO Figueroa identified as a wallet.

PO Figueroa checked the box indicating that he frisked § 87(2)(b). The report shows that he performed the frisk based on § 87(2)(b)'s furtive movements, inappropriate attire, refusal to comply with officer's directions, and the suspicious bulge which PO Figueroa identified as a wallet. PO Figueroa noted that § 87(2)(b) was not searched and that no weapon was discovered on him. PO Figueroa noted that the additional factors that applied were proximity to crime location, area has high incidence of reported offense, time of day/week/season corresponding to reports of criminal activity, evasive, false, or inconsistent responses to officer's questions, and changing direction at sight of officer.

### **CCRB Statement**

Rafael Figueroa was interviewed at the CCRB on December 12, 2011 (*encl. 18A*).

At approximately 3:55 p.m. on August 12, 2011, PO Figueroa was travelling down Livonia Avenue in RMP #5837. PO Figueroa did not recall which direction the van was travelling, where he was positioned, who the driver of the van was, or how many other officers he was with; PO Figueroa only recalled that PO Davila was inside the van, but he did not recall where she was positioned. As the van travelled down Livonia Avenue, PO Figueroa observed § 87(2)(b) walking westbound on Livonia Avenue towards Herzl Street. § 87(2)(b) walked alone and he glanced towards the police van as he made a furtive movement with his waistband. When asked to describe the movement that § 87(2)(b) made, PO Figueroa stated that § 87(2)(b) tugged on his waistband multiple times with two hands as if to pick his pants up. PO Figueroa could not recall how many times § 87(2)(b) repeated the tugging motion. Based on the glances that § 87(2)(b) made towards the police van and the tugging motion he made with his waistband, PO Figueroa suspected that § 87(2)(b) possessed a gun. When questioned directly whether there

were any additional factors that raised his suspicion that § 87(2)(b) was armed, PO Figueroa denied that there were.

The van stopped and PO Figueroa exited it alone and pursued § 87(2)(b) on foot; he did not recall if he ordered § 87(2)(b) to “stop” while seated inside the van, and he did not recall where his partners remained once he exited the van. Upon catching up to § 87(2)(b) PO Figueroa questioned § 87(2)(b) about his name, why he had tugged on his pants, and whether he possessed any weapons, and specifically, a gun. PO Figueroa did not recall if he asked § 87(2)(b) any additional questions. § 87(2)(b) did not respond to the questions posed by PO Figueroa. In an elevated tone, § 87(2)(b) protested and screamed, but PO Figueroa could not recall any of the specific comments made by § 87(2)(b).

PO Figueroa frisked the right side of § 87(2)(b)'s waistband but discovered no hard objects or weapons. In one of § 87(2)(b)'s pants pockets PO Figueroa felt a rectangular object and was able to identify the object as a wallet based on its shape. PO Figueroa denied entering any of § 87(2)(b)'s pockets and he denied possessing any of his personal items, including his cell phone or Bible. § 87(2)(b) never provided his consent for PO Figueroa to search him and PO Figueroa never accused him of possessing a gun. During the frisk, PO Davila stood to the side and had no verbal or physical interaction with § 87(2)(b).

The entire incident lasted approximately five minutes. PO Figueroa did not recall whether § 87(2)(b) requested his name or his shield number, and he had no recollection of providing this information to § 87(2)(b). The incident ended when § 87(2)(b) walked away cursing and PO Figueroa and PO Davila returned to the police van. PO Figueroa did not hand § 87(2)(b) a “What is a Stop, Question & Frisk?” card because his precinct does not have them.

When presented with the Stop, Question & Frisk Report that he completed, PO Figueroa stated that he observed on a bulge in one of § 87(2)(b)'s front pants pockets, which contributed to his suspicion that § 87(2)(b) was armed. PO Figueroa could not recall whether the bulge was located in § 87(2)(b)'s left or right pants pocket. PO Figueroa stated that the bulge was palm-sized but he did not know if it was more or less than six inches in length. PO Figueroa could not recall the shape of the bulge and he could not recall whether it was circular, rectangular, or triangular but suspected that it was created by a weapon, specifically a gun.

When questioned about the boxes he checked as factors leading to the stop of § 87(2)(b) on the Stop, Question and Frisk Report, PO Figueroa stated that he checked the boxes labeled “actions indicative of acting as a lookout” and “actions indicative of casing a victim” to reflect the glances that § 87(2)(b) made towards the police van. PO Figueroa checked “furtive movements” to reflect the tugging motion that § 87(2)(b) made to his waistband. PO Figueroa did not recall why he checked the box labeled “wearing clothing/disguises commonly used in commission of crime,” and he did not recall what § 87(2)(b) was wearing.

**Witness Officer: PO CATHRYN DAVILA**

- *At the time of the incident, PO Davila was a § 87(2)(b)-old Hispanic female with black hair and brown eyes who stood 5'3", 130 lbs.*
- *On August 12, 2011, PO Davila was assigned to post #43 between 1:00 p.m. and 11:35 p.m. PO Davila was dressed in uniform and was assigned to RMP #5837, a marked van, with PO Rafael Figueroa and PO Mark Brinadze.*

### Memo Book

PO Davila noted that she backed PO Figueroa in regards to one male stopped at Livonia Avenue and Amboy Street at 3:55 p.m. (*encl. 19A*).

### CCRB Testimony

PO Davila was interviewed at the CCRB on December 12, 2011 (*encl. 20A*). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

PO Davila was seated in the rear of the van and she did not recall who the driver of the van was or where PO Figueroa or PO Briandze were positioned. PO Davila observed § 87(2)(b) walking westbound on Livonia Avenue on the sidewalk opposite Betsy Head Park. § 87(2)(b) walked alone and as he did so he placed one of his hands beneath the top that he was wearing and adjusted his waistband by making an upward tugging motion that PO Davila construed as lifting an object and pushing it down into his pants. PO Davila could not recall what § 87(2)(b) was wearing and she could not recall whether the top that he was wearing was a jacket, sweatshirt, or t-shirt. PO Davila did not recall observing § 87(2)(b) place his hands into his pants pockets or manipulate any objects that he had stored inside of them. Based on the movement § 87(2)(b) made with his waistband, PO Davila suspected that he was concealing a weapon. PO Davila recalled no other factors or observations that led her to believe that § 87(2)(b) was concealing a weapon.

The van stopped and both PO Figueroa and PO Davila exited it; PO Davila could not recall whose decision it was to stop § 87(2)(b). PO Brinadze remained inside the van and PO Davila had no recollection of PO Brinadze exiting the van or speaking to § 87(2)(b). PO Figueroa approached § 87(2)(b) and stopped him, though PO Davila could not recall exactly how PO Figueroa effected the stop; PO Davila could not recall whether PO Figueroa verbally addressed § 87(2)(b) while seated inside the van. PO Davila stood about five feet away from PO Figueroa and listened as PO Figueroa explained to § 87(2)(b) that the adjustment he made to his waistband had caused the officers to suspect that he was concealing a weapon. § 87(2)(b) protested and accused the officers of harassing him based on his race. PO Davila could not recall what, if any, questions PO Figueroa asked § 87(2)(b) and she specifically did not recall hearing PO Figueroa ask § 87(2)(b) whether he had a gun. PO Davila did not recall § 87(2)(b)'s explanation for his presence or activity in the area.

PO Figueroa frisked either the left or right side of § 87(2)(b)'s waistband, the area that he adjusted and where he was suspected of possessing a weapon. The frisk did not extend to any other parts of § 87(2)(b)'s body. PO Figueroa did not frisk § 87(2)(b)'s chest, pants pockets, or ankles. PO Figueroa never placed his hands into any of § 87(2)(b)'s pockets, never searched him, and never possessed any of § 87(2)(b)'s personal items, including his wallet or cell phone. As he was being frisked, § 87(2)(b) grew more agitated and continued screaming about how the police were harassing him and doing "illegal things" to him. § 87(2)(b)'s shouting attracted the attention of pedestrians in the area who approached the group and assembled around them. None of the pedestrians attempted to physically interfere with the stop and frisk that PO Figueroa performed on § 87(2)(b).

After about five minutes, PO Figueroa completed the stop and both he and PO Davila returned to the police van which was parked about five feet away. PO Davila did not recall hearing § 87(2)(b).



§ 87(2)(b) request PO Figueroa's name or shield number and PO Davila did not recall hearing PO Figueroa identify himself by name to § 87(2)(b)

**Subject Officer: PO MARK BRINADZE**

- *At the time of the incident, PO Brinadze was a § 87(2)(b)-old Caucasian male with brown hair and brown eyes who stood 5'9", 215 lbs.*
- *On August 12, 2011, PO Brinadze was assigned to impact patrol with PO Rafael Figueroa between 1:00 p.m. and 9:35 p.m. PO Brinadze was dressed in uniform and was assigned to RMP #5837, a marked vehicle.*

# Memo Book

PO Brinadze recorded that he backed PO Figueroa with one male stopped at 3:55 p.m. at Amboy Street and Livonia Avenue (*encl. 21A*).

## CCRB Testimony

PO Brinadze was interviewed at the CCRB on January 20, 2012 (*encl.* 22A). PO Brinadze had no recollection of this incident. He did not recall where he was positioned inside of the van at the time of the incident and he had no recollection of backing PO Figueroa in regards to the memo book entry he made regarding this incident. His memory was not restored when presented with a copy of the handwritten Stop, Question & Frisk Report completed by PO Figueroa and he did not recognize § 87(2)(b) in the photograph presented to him during his CCRB interview.

## Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of June 5, 2012, with regard to the incident (*encl. 28D*).

### Civilian's Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
■ [REDACTED]  
[REDACTED]  
[REDACTED]  
■ [REDACTED]  
[REDACTED]  
[REDACTED]

### Civilian's CCRB History

- § 87(2)(b) was identified as a complainant/witness in CCRB § 87(2)(b)

### Subject Officer's CCRB History

- PO Rafael Figueroa has been a member of the service for three years and there are no substantiated CCRB allegations against him (*encl. 6A*).
- PO Mark Brinadze has been a member of the service for three years and there are no substantiated CCRB allegations against him (*encl. 7A*).

## Conclusion

### Identification of Subject Officers

PO Figueroa admitted to his role in questioning and stopping § 87(2)(b) § 87(2)(g) § 87(2)(b) identified both PO Figueroa and PO Brinadze in a photo array administered at CCRB on July 16, 2012, as the two Hispanic males involved in this incident. He stated that both officers refused to supply him with their names and shield numbers. § 87(2)(g)

### Allegations Not Pleaded

§ 87(2)(g)

### Investigative Findings and Recommendations

- **Allegation A: Abuse of Authority: PO Rafael Figueroa questioned** § 87(2)(b)
- **Allegation B: Abuse of Authority: PO Rafael Figueroa stopped** § 87(2)(b)

According to § 87(2)(b) he made eye contact with PO Figueroa for about five seconds as he walked along Livonia Avenue. During that time, § 87(2)(b) made no movements with his hands, which he stated remained to his side. § 87(2)(b) denied tugging on his waistband and he denied that he was storing any objects there. From the driver's seat of the police van, PO Brinadze reportedly ordered § 87(2)(b) to "come over," but § 87(2)(b) ignored the command and continued walking. After he did so, PO Figueroa and PO Brinadze exited the van and ran after § 87(2)(b). Upon catching up to § 87(2)(b) PO Figueroa extended his arm and ordered § 87(2)(b) to stop walking, whereby PO Brinadze requested § 87(2)(b)'s identification and told § 87(2)(b) that if he did not have his identification it would give PO Brinadze reason to search him. At that point, PO Figueroa allegedly asked § 87(2)(b) whether he had anything on him that he was not supposed to. § 87(2)(b) told PO Figueroa that he had no such objects, and told PO Figueroa that he could search him. With § 87(2)(b)'s consent, PO Figueroa searched him and removed his personal items from his pants pockets.

According to § 87(2)(b) PO Figueroa ran up to § 87(2)(b) on the sidewalk, grabbed him, and asked him whether he possessed any weapons. § 87(2)(b) stated that the officers pulled up alongside § 87(2)(b) on the sidewalk, ordered him to stop, and pursued him on foot after § 87(2)(b) continued walking. PO Figueroa then exited the van, caught up to § 87(2)(b) on the sidewalk, and reiterated his command for him to stop walking.

PO Figueroa stated that he pursued § 87(2)(b) on foot, and he did not recall ordering § 87(2)(b) to stop while seated inside the van. PO Figueroa stopped § 87(2)(b) because he suspected that he was armed with a gun. To support his suspicion, PO Figueroa cited the glances that § 87(2)(b) made towards the police van as he walked along Livonia Avenue and the furtive adjustment that he made to his waistband. PO Figueroa stated that there were no other factors that caused him to suspect that § 87(2)(b) was armed. Only when presented with a

copy of the handwritten Stop, Question & Frisk Report did PO Figueroa recall that he observed a bulge in § 87(2)(b)'s front pants pocket. PO Figueroa described the bulge as “palm-sized,” but he could not recall its exact dimensions or shape. PO Figueroa stated that upon frisking § 87(2)(b) he found no hard objects, apart from a wallet stored in § 87(2)(b)'s pocket, which PO Figueroa identified based on its shape and without entering § 87(2)(b)'s pocket.

PO Davila did not recall how PO Figueroa effected the stop of § 87(2)(b). However, she corroborated the adjustment that § 87(2)(b) made to his waistband, and she construed such movements as an attempt to conceal a weapon by lifting it up and pushing it down. PO Davila recalled no other factors that caused her to believe that § 87(2)(b) was armed and attempting to conceal a weapon. PO Brinadze did not recall the incident.

§ 87(2)(g)

Founded suspicion that criminality is afoot is required for police officers to ask civilians pointed questions, which would lead the civilian to reasonably believe that he or she is the accused of wrongdoing and the target of the officer's investigation. People v. Hollman, 79 N.Y. 2d 184 (1992) [encl. A]. (See People v. Semper, NYLJ Sept. 30, 2003 (holding officer conducted improper common law inquiry by asking “do you have anything on you”) (encl. 4C-D). Innocuous or equivocal behavior does not generated founded suspicion that criminality is afoot. People v. Moore, 176 A.D. 2d 299 (App. Div. 2<sup>nd</sup> Dep't, 1991) [encl. 3]. (See also People v. Solano, 46 A.D. 3d 1225 (App. Div. 3<sup>rd</sup> Dep't, 2007)) [encl. 4A-B]. Police may stop a person when they have reasonable suspicion that such person has committed, is committing, or is about to commit a crime. People v. Oliver, 262 A.D. 2d 335 (App. Div. 2<sup>nd</sup> Dep't, 1999) [encl. 1]; (See also People v. DeBour, 40 N.Y. 2d 210, 223 (1976)) [encl. 2. A person is stopped when the police interference constitutes a significant interruption of such person's liberty of movement. Oliver, at 336. (See also Solano, at 1224.)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

- **Allegation C: Abuse of Authority: PO Rafael Figueroa refused to provide his name and shield number to § 87(2)(b)**
- **Allegation D: Abuse of Authority: PO Mark Brinadze refused to provide his name and shield number to § 87(2)(b)**

§ 87(2)(b) alleged that as PO Figueroa and PO Brinadze were returning to the police van he asked both of them for their names and shield numbers. § 87(2)(g)

During his first official statement at the CCRB, § 87(2)(b) stated that he directed his request only to PO Figueroa; however, during his second official statement at the CCRB he stated that he directed the request for information towards both PO Figueroa and PO Brinadze. In his initial complaint filed at the CCRB on August 12, 2011, § 87(2)(b) reported that PO Figueroa told him that he should have obtained the information at the beginning of the stop. When interviewed at the CCRB on August 19, 2011, § 87(2)(b) attributed such verbal response to PO Brinadze. § 87(2)(b) never obtained either the name or shield number from either PO Figueroa or PO Brinadze.

Each officer involved either denied hearing or had no recollection of § 87(2)(b) requesting identifying information from PO Figueroa and PO Brinadze. § 87(2)(g)

§ 87(2)(b) was uncertain whether § 87(2)(b) directed his request for information to a specific officer or generally towards the group of officers. According to § 87(2)(b) none of the officers responded to § 87(2)(b)'s request for information. § 87(2)(b) stated that § 87(2)(b) asked all three officers on scene – PO Figueroa, PO Brinadze, and PO Davila – for their shield numbers, but she was uncertain whether § 87(2)(b) requested their names. According to § 87(2)(b) none of the officers supplied § 87(2)(b) with their shield numbers, though she stated that she observed one of the officers provide § 87(2)(b) with a card.

§ 87(2)(g)

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Team: 6

Investigator: _____	Jonathan Phillips	_____
Signature	Print	Date

Supervisor: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date